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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
BILLINGS DIVISION

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|                            |   |                                       |
|----------------------------|---|---------------------------------------|
| ROBERT G. FERRELL,         | ) | Cause No. _____                       |
|                            | ) |                                       |
| Plaintiff,                 | ) | [formerly Montana Thirteenth Judicial |
|                            | ) | District Court Cause No. DV-13-0409]  |
| vs.                        | ) |                                       |
|                            | ) |                                       |
| NELSON TRUCKING CO., INC., | ) |                                       |
|                            | ) |                                       |
| Defendant.                 | ) |                                       |

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**NOTICE OF REMOVAL**

Defendant Nelson Trucking Co., Inc., hereby removes Cause No. DV-13-0409 from the Montana Thirteenth Judicial District Court to the United States District Court for the District of Montana, Billings Division, pursuant to 28 U.S.C. §§1332, 1441, and 1446, and as grounds for its removal states as follows:

1. On April 1, 2013, Plaintiff, Robert G. Ferrell filed a Complaint in Montana Thirteenth Judicial District Court, styled *Robert G. Ferrell v. Nelson Trucking Co., Inc.*, Cause No. DV-13-0409 (the “State Court Action”).

2. On April 10, 2013, Defendant, Nelson Trucking Co., Inc., was served with the Summons, Complaint and discovery requests, that are attached hereto as **Exhibit A**.

3. As specified more completely in the attached Complaint, Plaintiff alleges that he sustained serious personal injury and permanent disability, solely and proximately caused by the fault of the Defendant (and/or Defendant's servants and employees), in a collision, on April 27, 2010, between a tractor-trailer vehicle operated by the Defendant and a tractor-trailer vehicle in which Plaintiff was riding as a passenger.

Plaintiff claims damages for:

- (1) physical and mental suffering (past, present and future);
- (2) loss of established course of life;
- (3) past medical expenses;
- (4) future medical expenses and medical attention; and
- (5) other just and appropriate damages.

**DIVERSITY JURISDICTION UNDER 28 U.S.C. §1332(a)**

4. This Court has jurisdiction over this matter under 28 U.S.C. §1332(a), because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy is more than \$75,000, exclusive of interest and costs.

5. Plaintiff alleges that he is, and was at all material times a resident of the state of Georgia. Complaint, ¶1. As a resident of Georgia, Plaintiff is a citizen of Georgia. U.S. Const. 14<sup>th</sup> Amend.

6. Defendant is a corporation organized under the laws of the state of Washington, with its principal place of business in Seattle, Washington. Complaint, ¶2. Therefore, Defendant is a citizen of the State of Washington. 28 U.S.C. §1332(c)(1).

7. There is complete diversity of citizenship between Plaintiff and Defendant in this action.

8. As required by §25-4-311, M.C.A., Plaintiff does not quantify the amount of damages he seeks to recover in this case. *See*, Complaint, Prayer for Relief. Given that Plaintiff's Complaint alleges serious, painful personal injury, permanent disability and past and future medical expenses arising from a vehicular collision in which one other person died, (Complaint, ¶9), from the face of the Complaint it is apparent that the amount in controversy more likely than not exceeds \$75,000, exclusive of interest and costs. Additionally, Plaintiff's attorney in March 2013 made demand on Defendant's insurer for an amount in excess of \$300,000. When the plaintiff's damages are unquantified in the complaint, the amount in controversy can be established by allegations in the removal notice referencing allegations on the face

of the Complaint. *Singer v. State Farm Mutual Automobile Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Allen v. R & H Oil and Gas Co.*, 63 F.2d 1326, 1335 (5<sup>th</sup> Cir. 1995); 28 U.S.C. §1446(c)(2).

**ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE  
BEEN SATISFIED**

9. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of all of the process, pleadings, orders and documents from the State Court Action which have been served upon Defendant are being filed with this Notice of Removal. (**Exhibit A.**) Defendant will file true and legible copies of all other documents on file in the State Court Action within 30 days of the filing of this Notice of Removal.

10. This Notice of Removal has been filed within 30 days of the date that Defendant was served with the Summons or the Complaint in this matter. Removal is therefore timely in accordance with 28 U.S.C. §1446(b).

11. Venue is proper in this Court pursuant to 28 U.S.C. §1441(a) and 1446(a), and L.R. 1.2, because the State Court Action is pending in the Montana Thirteenth Judicial District Court located in Yellowstone County, and Yellowstone County is within the United States District Court for the District of Montana, Billings Division.

12. This Notice of Removal has been served on Plaintiff's counsel by mail.

13. A Notice of Removal to Federal Court (attached as **Exhibit B**) (with a copy of this Notice of Removal) is being mailed to the Montana Thirteenth Judicial District Court, Yellowstone County, contemporaneously with the electronic filing in this Court of Notice of Removal. 28 U.S.C. §1446(d).

14. The undersigned counsel hereby certifies that there are no hearings set before the Montana Thirteenth Judicial District Court, Yellowstone County, from which this case is removed. Additionally, Defendant has filed no pleadings in the State Court Action, but intends to respond to the Complaint within the times specified by Rule 81, F.R.Civ.P.

### **CONCLUSION**

By filing this Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant intends no admission of fact, law or liability by this Notice, and expressly reserves all defenses, motions and/or pleas.

Because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs, this Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1332. Defendant is therefore entitled to remove this case to this Court pursuant to 28 U.S.C. § 1441.

DATED April 26, 2013.

Respectfully Submitted,

/s/ Lee C. Henning

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ATTORNEYS FOR DEFENDANT

EXHIBIT A: Summons, Complaint and Discovery Requests served on  
Defendant

EXHIBIT B: Notice to the Montana Nineteenth Judicial District Court

EXHIBIT C: Civil Cover Sheet

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2013, a copy of the foregoing document was served on the following persons by the following means:

1 CM/ECF  
       Hand Delivery  
2,3 Mail  
       Overnight Delivery Service  
       Fax  
       E-Mail

1. Clerk, United States District Court
2. C. Frederick Overby  
OVERBY LAW OFFICE, PC  
101 East Main St. Suite C  
Bozeman, MT 59715
3. Kristie Lee Boelter  
Clerk of District Court  
Thirteenth Judicial District Court  
P.O. Box 35030  
Billings, MT 59107

/s/ Lee Henning

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Lee C. Henning  
Henning, Keedy & Lee, P.L.L.C.  
ATTORNEYS FOR DEFENDANT